

DOCUMENT RESUME

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Authority for Retroactive Implementation of Pay Increases.
B-114839. August 12, 1977. 3 pp.

Decision re: Canal Zone Government; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Personnel Management and Compensation (300).
Contact: Office of the General Counsel; Civilian Personnel.
Budget Function: General Government; Central Personnel
Management (805).

Congressional Relevance: House Committee on Merchant Marine and
Fisheries: Panama Canal Subcommittee. Rep. Ralph H.
Metcalf, Chairman.

Authority: District of Columbia Self-Government and Governmental
Reorganization Act (P.L. 93-198; 87 Stat. 774). (P.L.
93-407; 88 Stat. 1036). (P.L. 85-550; 72 Stat. 405; 72
Stat. 411; 72 Stat. 407). (P.L. 94-446; 90 Stat. 1490; 90
Stat. 1492). P.L. 94-333. 90 Stat. 785. 90 Stat. 789. 65
Stat. 637. 10 Comp. Gen. 514. 25 Comp. Gen. 601. 31 Comp.
Gen. 163. 31 Comp. Gen. 191. 17 Comp. Gen. 147. Canal Zone
Code, title II, sec. 144(c). District of Columbia Act 1-110.
District of Columbia Law 1-90. Hamilton v. Rathbone, 175
U.S. 414 (1899).

Rep. Ralph H. Metcalf, Chairman of the House
Subcommittee on the Panama Canal, requested an opinion as to
whether the Canal Zone Government has the authority to implem-
ent for its employees the retroactive portion of salary increases
granted to District of Columbia police, firefighters, and
teachers. The Canal Zone Government may not implement the pay
increases retroactively under the authority of section 144(c) of
title 2 of the Canal Zone Code, since the corresponding
increases for the categories of employees of the District of
Columbia upon which comparability is based are no longer
established by an Act of Congress. (Author/SC)

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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-114839

DATE: August 12, 1977

MATTER OF: Canal Zone Government - Authority for
Retroactive Implementation of Pay
Increases

DIGEST: Canal Zone Government may not implement pay
increases for police, firefighters, and
teachers retroactively under authority of
section 144(c) of title 2, Canal Zone Code.
Although section 144(c) authorizes raises to
be made effective " * * * not earlier than
the effective date of the corresponding in-
creases provided by Act of Congress", the
corresponding increases for the same categories
of employees of the District of Columbia,
upon which comparability is based, are no
longer established by "Act of Congress."

We have been requested by Representative Ralph H. Metcalfe,
Chairman, Subcommittee on the Panama Canal, House Committee on
Merchant Marine and Fisheries, to give our opinion on whether
the Canal Zone Government has the authority to implement for
its employees the retroactive portion of salary increases
granted to District of Columbia police, firefighters, and
teachers.

The pay increases referred to were made prospectively
effective on July 4, 1976, in the case of Canal Zone police and
firefighters. Canal Zone teachers received a temporary in-
crease for prospective application beginning August 1, 1976,
and terminating September 8, 1976. These pay increases cor-
responded in amount to increases established for the same groups
of employees by the District of Columbia Government. However,
the District of Columbia increases were made retroactively
effective to October 1, 1975, in the case of police and fire-
fighters, and to January 1, 1976, in the case of teachers. The
question presented is whether the Canal Zone Government has
the authority to implement a corresponding retroactive pay in-
crease for its employees.

Salaries established for police, firefighters, and teachers
for the District of Columbia have long provided the basis for
wage revisions for similarly situated Canal Zone employees.
Pay comparability for employees in these categories was pre-
viously required by section 1(c) of the Act of October 25, 1951,
65 Stat. 637, which stated as follows:

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"In the exercise of the authority granted by section 81 of title 2 of the Canal Zone Code, as amended, the Governor of the Canal Zone is authorized and directed to grant additional compensation to policemen, firemen, and school teachers employed by the Canal Zone Government, whenever additional compensation is granted to employees of the District of Columbia employed in similar or comparable positions. The additional compensation for such Canal Zone employees shall be effective as of the date any additional compensation is granted to similar or comparable employees of the District of Columbia." Act of Oct. 25, 1951 § 1(c), 65 Stat. 637. (Emphasis added.)

This provision was repealed by section 16(b)(2) of Public Law 85-550, July 25, 1958, 72 Stat. 405, 411. Section 5 of Public Law 85-550, 72 Stat. 407, substituted for the above provision the following language, now contained in section 144 of title 2, Canal Zone Code, governing the granting of pay increases in the Canal Zone:

"§144. Compensation

"(a) The head of each department, in accordance with this subchapter, shall establish, and from time to time may revise, the rates of basic compensation for positions and employees under his jurisdiction.

"(b) The rates of basic compensation may be established and revised in relation to the rates of compensation for the same or similar work performed in the continental United States or in such areas outside the continental United States as may be designated in the regulations referred to in section 155(a) of this title.

"(c) The head of each department may grant increases in rates of basic compensation in amounts not to exceed the amounts of the increases granted, from time to time, by Act of Congress in corresponding rates of compensation in the appropriate schedule or scale of pay. The head of the department concerned may make the increases effective as of such date as he designates but not earlier than the effective date of the corresponding increases provided by the Act of Congress. * * *" (Emphasis added.)

At the time of enactment of Public Law 85-550, increases in the pay rates of District of Columbia police, firefighters, and teachers were legislated by Congress and the implementation of similar increases for Canal Zone personnel was authorized under 2 Canal Zone Code 144(c) with retroactivity permitted, "* * *but not earlier than the effective date of the corresponding increases provided by Act of Congress." This subsection retains the authority for retroactive implementation of pay increases by the Canal Zone Government.

Two subsequent enactments by the Congress substantially changed the way in which salary adjustments are accomplished for District of Columbia police, firefighters, and teachers. The District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93-198, December 24, 1973, 87 Stat. 774, gives to the Mayor of the District of Columbia the authority to administer the personnel functions of the District, including pay of District of Columbia employees, under legislation enacted by Congress until such time as the Council of the District of Columbia establishes a merit system applicable to District employees. Section 422(3), 87 Stat. 791. Section 714(c) of the Act, 87 Stat. 819, provides that personnel legislation relating to the District remains in effect until such time as the Council elects to provide equal or equivalent coverage. Sections 302, 404, and 717 of the Act, 87 Stat. 784, 787, and 820, respectively, vest in the Council of the District of Columbia general legislative powers, including the authority to amend laws and regulations in effect on the effective date of the District's Charter. With certain exceptions

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acts passed by the Council and approved by the Mayor become law if within 30 days of transmittal to the Congress, both Houses of Congress do not adopt a concurrent resolution disapproving the act. Section 602(c)(1), 87 Stat. 814.

Subsequent to passage of the District of Columbia Self-Government Act, Congress enacted Public Law 93-407, September 3, 1974, 88 Stat. 1036, which established a committee for a negotiated wage establishment for District of Columbia police and firefighters and a system for mayoral recommendations to the Council of proposed pay increases for teachers. In each instance, amounts approved by act of the Council are included in District of Columbia budget requests for appropriation by Congress.

The 1976 retroactive raises for District of Columbia police, firefighters, and teachers were accomplished under the new procedures established by Public Laws 93-198 and 93-407. The General Counsel of the Canal Zone Government is of the view that 2 Canal Zone Code 144(c) does not authorize these increases to be made retroactive for Canal Zone personnel because the District of Columbia raises were not provided by an "Act of Congress." Employee representatives, however, contend that the retroactive increases may be authorized under this section on the basis that the failure by Congress to enact a concurrent resolution disapproving the District of Columbia legislation is an "Act of Congress" approving such legislation.

We have been asked to take into consideration the following questions in making our determination:

- "1. Is there a rule that a noncorporate Federal agency is prohibited from making retroactive changes in employee compensation and allowances unless such changes are in accordance with an express provision of law?
- "2. Does the 'District of Columbia Self-Government and Governmental Reorganization Act' have the effect of fixing the retroactive pay of police, fire, and teaching personnel in the District of Columbia by means other than an 'Act of Congress'?

Since Congress must approve the District of Columbia budget on a line-item basis and since the Congress retains power, through the Appropriations process, to augment, restore, or deny funds to specific arms of the D. C. Government, then can it be correct that the composite outcome of the D. C. budget process is other than an Act of Congress?

- "3. Should the definition of an 'Act of Congress' be influenced by the legislative history of the statute in which the phrase appears? Specifically does the legislative intent in the writing of P. L. 85-550 help to clarify what the meaning of the phrase 'Act of Congress' should be in decisions on retroactive pay?
- "4. Is it correct that Appropriations Acts are in general considered 'Acts of Congress'? Does the phrase 'Act of Congress' in P. L. 85-550 have any special or different interpretation than the use of that phrase in other statutes?
- "5. Section 603(a) of the District of Columbia Home Rule Act provides that the Federal Government will retain its control of the D. C. budget in stating:

"Section 603(a) - 'Nothing in this Act shall be construed as making any change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the Federal Office of Management and Budget, and the Comptroller General in the preparation, review, submission, examination, authorization, and appropriation of the total budget of the District of Columbia.'

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"Regarding Section 603(a), does retention of ultimate legislative authority for the Federal Government in the District affairs and the retention of budget power in offices of the Federal Government mean that the D. C. appropriations made by law are in fact the authority or limitation of increased compensation, both prospective and retroactive, to District Government personnel?"

The general rule is that, in the absence of specific statutory authority, administrative changes in salary rates may not be made retroactively effective. See 10 Comp. Gen. 514 (1931); 25 id. 601 (1946); 31 id. 163 (1951); and id. 191 (1951). The first question is therefore answered in the affirmative.

Questions 2 through 5 are interrelated and therefore will not be addressed separately but will be answered as a group.

While the language of section 144(c) of title 2, Canal Zone Code, is not precise in specifying exactly which rates are to be used as the basis for comparability pay increases for Canal Zone employees, it is clear in requiring that increases in these base rates be granted or provided by an "Act of Congress." A statute which is clear and unambiguous on its face is not subject to construction. Hamilton v. Rathbone, 175 U.S. 414 (1899). We do not consider the provision of this section referring to an "Act of Congress" to be susceptible to interpretation or subject to influence by the legislative history of Public Law 85-550.

"Act of Congress" refers to a law or statute enacted by the Congress. See Black's Law Dictionary, page 42 (Rev. 4th Ed. 1968) and cases cited therein. Under the D.C. Self-Government Act, Congress may by passage of a concurrent resolution disapprove legislation passed by the District of Columbia Council and an act of the Council becomes law if Congress fails to pass such a resolution. In neither case does congressional action result in a statute or "Act of Congress" within the usual meaning of that term.

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The raises granted to District of Columbia school teachers retroactive to the first pay period on or after January 1, 1976, were first provided for in an emergency act of the District of Columbia Council passed on April 27, 1976. D.C. Act 1-110, April 26, 1976. Under the authority granted to the Council under section 412 of the D.C. Self-Government Act, emergency legislation need not be presented to Congress for approval and may remain effective for no more than 90 days. Successive emergency acts continued the pay raise in effect until March 29, 1977, almost 1 year after the passage of the first act and 15 months from the effective date of the increase, on which date permanent legislation authorizing the increase for D.C. teachers was effective. D.C. Law 1-90, March 29, 1977. Permanent legislation was not submitted to the Congress until January 10, 1977, more than 1 year after the effective date of the increase. We conclude therefore that these pay increases were not provided by an "Act of Congress" as required by section 144(c) of title 2 of the Canal Zone Code.

Neither do we consider the appropriation act resulting from the District of Columbia congressional appropriation process to fulfill the requirement of section 144(c) of title 2 of the Canal Zone Code for retroactive application of pay increases that the increases be "provided by the Act of Congress." We note particularly that the sums appropriated for pay increases for fiscal years 1976 and 1977 for District of Columbia police, firefighters, and teachers, entitled "Personal Services" in the appropriation acts, are stated in a lump sum without reference to specific increases or pay rates. See Public Law 94-333, June 30, 1976, 90 Stat. 785, 789; Public Law 94-446, October 1, 1976, 90 Stat. 1490, 1492. We have long considered that the amount of individual items in estimates presented to Congress on the basis of which a lump sum appropriation is enacted are not binding on administrative officers unless carried into the appropriation itself. See 17 Comp. Gen. 147 (1937). In this case, Congress has provided for the enactment of pay increases by the District of Columbia Government under the procedures established in Public Laws 93-198 and 93-407, subject to the 30-day congressional review period of section 602(c)(1) of Public Law 93-198, 87 Stat. 814. The "Personal Services" appropriation provides the funding of pay increases rather than the establishment of the underlying

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wage rates. We find additional support for this view in the treatment accorded such increases in hearings before the appropriation committees of the Congress. (See e.g., District of Columbia Appropriations for 1975, Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 93 Cong., 2d Sess., Part 2, pp. 964-971; District of Columbia Appropriations for 1976, Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 94th Cong., 2d Sess., pp. 135-138.)

We are of the opinion that the foregoing statements apply equally to the Federal Government's retention of ultimate control over the District of Columbia budget under section 603(a) of Public Law 93-198. While it is unquestioned that control of the budget in the aggregate has in fact been retained by the United States, this does not diminish the legislative authority granted to the District of Columbia Government under Public Laws 93-198 and 93-407 with respect to the establishment of wage increases for specific groups of employees. Questions 2 through 5 are answered accordingly.

In view of the above, we are of the opinion that pay increases for D.C. police, firefighters, and teachers may not be considered to be "granted by Act of Congress." Accordingly, we conclude that the Canal Zone Government lacks the authority to implement these pay increases retroactively for its police, firefighters, and teachers under the provisions of 2 Canal Zone Code 144(c).

R. F. Kotten
Deputy Comptroller General
of the United States